Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. 23769 September 16, 1925

SONG FO & COMPANY, plaintiff-appellee,
vs.
HAWAIIAN PHILIPPINE CO., defendant-appellant.

Hilado and Hilado, Ross, Lawrence and Selph and Antonio T. Carrascoso, Jr., for appellant.
Arroyo, Gurrea and Muller for appellee.

MALCOLM, *J.:*

In the court of First Instance of Iloilo, Song Fo & Company, plaintiff, presented a complaint with two causes of action for breach of contract against the Hawaiian-Philippine Co., defendant, in which judgment was asked for P70,369.50, with legal interest, and costs. In an amended answer and cross-complaint, the defendant set up the special defense that since the plaintiff had defaulted in the payment for the molasses delivered to it by the defendant under the contract between the parties, the latter was compelled to cancel and rescind the said contract. The case was submitted for decision on a stipulation of facts and the exhibits therein mentioned. The judgment of the trial court condemned the defendant to pay to the plaintiff a total of P35,317.93, with legal interest from the date of the presentation of the complaint, and with costs.

From the judgment of the Court of First Instance the defendant only has appealed. In this court it has made the following assignment of errors: "I. The lower court erred in finding that appellant had agreed to sell to the appellee 400,000, and not only 300,000, gallons of molasses. II. The lower court erred in finding that the appellant rescinded without sufficient cause the contract for the sale of molasses executed by it and the appellee. III. The lower court erred in rendering judgment in favor of the appellee and not in favor of the appellant in accordance with the prayer of its answer and cross-complaint. IV. The lower court erred in denying appellant's motion for a new trial." The specified errors raise three questions which we will consider in the order suggested by the appellant.

1. Did the defendant agree to sell to the plaintiff 400,000 gallons of molasses or 300,000 gallons of molasses? The trial court found the former amount to be correct. The appellant contends that the smaller amount was the basis of the agreement.

The contract of the parties is in writing. It is found principally in the documents, Exhibits F and G. The First mentioned exhibit is a letter addressed by the administrator of the Hawaiian-Philippine Co. to Song Fo & Company on December 13, 1922. It reads:

SILAY, OCC. NEGROS, P.I.
December 13, 1922

Messrs. SONG FO AND CO.
Iloilo, Iloilo.

DEAR SIRS: Confirming our conversation we had today with your Mr. Song Fo, who visited this Central, we wish to state as follows:

He agreed to the delivery of 300,000 gallons of molasses at the same price as last year under the same condition, and the same to start after the completion of our grinding season. He requested if possible to let you have molasses during January, February and March or in other words, while we are grinding, and we agreed with him that we would to the best of our ability, altho we are somewhat handicapped. But we believe we can let you have 25,000 gallons during each of the milling months, altho it interfere with the shipping of our own and planters sugars to Iloilo. Mr. Song Fo also asked if we could supply him with

another 100,000 gallons of molasses, and we stated we believe that this is possible and will do our best to let you have these extra 100,000 gallons during the next year the same to be taken by you before November 1st, 1923, along with the 300,000, making 400,000 gallons in all.

Regarding the payment for our molasses, Mr. Song Fo gave us to understand that you would pay us at the end of each month for molasses delivered to you.

Hoping that this is satisfactory and awaiting your answer regarding this matter, we remain.

Yours very truly,

HAWAIIAN-PHILIPPINE COMPANY
BY R. C. PITCAIRN
Administrator.

Exhibit G is the answer of the manager of Song Fo & Company to the Hawaiian-Philippine Co. on December 16, 1922. This letter reads:

December 16th, 1922.

Messrs. HAWAIIAN-PHILIPPINE CO.,
Silay, Neg. Occ., P.I.

DEAR SIRS: We are in receipt of your favours dated the 9th and the 13th inst. and understood all their contents.

In connection to yours of the 13th inst. we regret to hear that you mentioned Mr. Song Fo the one who visited your Central, but it was not for he was Mr. Song Heng, the representative and the manager of Messrs. Song Fo & Co.

With reference to the contents of your letter dated the 13th inst. we confirm all the arrangements you have stated and in order to make the contract clear, we hereby quote below our old contract as amended, as per our new arrangements.

(*a*) Price, at 2 cents per gallon delivered at the central.

(*b*) All handling charges and expenses at the central and at the dock at Mambaguid for our account.

(*c*) For services of one locomotive and flat cars necessary for our six tanks at the rate of P48 for the round trip dock to central and central to dock. This service to be restricted to one trip for the six tanks.

Yours very truly,

SONG FO & COMPANY
By _____
Manager.

We agree with appellant that the above quoted correspondence is susceptible of but one interpretation. The Hawaiian-Philippine Co. agreed to deliver to Song Fo & Company 300,000 gallons of molasses. The Hawaiian-Philippine Co. also believed it possible to accommodate Song Fo & Company by supplying the latter company with an extra 100,000 gallons. But the language used with reference to the additional 100,000 gallons was not a definite promise. Still less did it constitute an obligation.

If Exhibit T relied upon by the trial court shows anything, it is simply that the defendant did not consider itself obliged to deliver to the plaintiff molasses in any amount. On the other hand, Exhibit A, a letter written by the manager of Song Fo & Company on October 17, 1922, expressly mentions an understanding between the parties of a contract for P300,000 gallons of molasses.

We sustain appellant's point of view on the first question and rule that the contract between the parties provided for the delivery by the Hawaiian-Philippine Co. to song Fo & Company of 300,000 gallons of molasses.

2. Had the Hawaiian-Philippine Co. the right to rescind the contract of sale made with Song Fo & Company? The trial judge answers No, the appellant Yes.

Turning to Exhibit F, we note this sentence: "Regarding the payment for our molasses, Mr. Song Fo (Mr. Song Heng) gave us to understand that you would pay us at the end of each month for molasses delivered to you." In

Exhibit G, we find Song Fo & Company stating that they understand the contents of Exhibit F, and that they confirm all the arrangements you have stated, and in order to make the contract clear, we hereby quote below our old contract as amended, as per our new arrangements. (*a*) Price, at 2 cents per gallon delivered at the central." In connection with the portion of the contract having reference to the payment for the molasses, the parties have agree on a table showing the date of delivery of the molasses, the amount and date thereof, the date of receipt of account by plaintiff, and date of payment. The table mentioned is as follows:

Date of delivery	Account and date thereof		Date of receipt of account by plaintiff	Date of payment
1922			**1923**	**1923**
Dec. 18	P206.16	Dec. 26/22	Jan. 5	Feb. 20
Dec. 29	206.16	Jan. 3/23	do	Do
1923				
Jan. 5	206.16	Jan. 9/23	Mar. 7 or 8	Mar. 31
Feb. 12	206.16	Mar. 12/23	do	Do
Feb. 27	206.16	do	do	Do
Mar. 5	206.16	do	do	Do
Mar. 16	206.16	Mar. 20/23	Apr. 2/23	Apr. 19
Mar. 24	206.16	Mar. 31/23	do	Do
Mar. 29	206.16	do	do	Do

Some doubt has risen as to when Song Fo & Company was expected to make payments for the molasses delivered. Exhibit F speaks of payments "at the end of each month." Exhibit G is silent on the point. Exhibit M, a letter of March 28, 1923, from Warner, Barnes & Co., Ltd., the agent of the Hawaiian-Philippine Co. to Song Fo & Company, mentions "payment on presentation of bills for each delivery." Exhibit O, another letter from Warner, Barnes & Co., Ltd. to Song Fo & Company dated April 2, 1923, is of a similar tenor. Exhibit P, a communication sent direct by the Hawaiian-Philippine Co. to Song Fo & Company on April 2, 1923, by which the Hawaiian-Philippine Co. gave notice of the termination of the contract, gave as the reason for the rescission, the breach by Song Fo & Company of this condition: "You will recall that under the arrangements made for taking our molasses, you were to meet our accounts upon presentation and at each delivery." Not far removed from this statement, is the allegation of plaintiff in its complaint that "plaintiff agreed to pay defendant, at the end of each month upon presentation accounts."

Resolving such ambiguity as exists and having in mind ordinary business practice, a reasonable deduction is that Song Fo & Company was to pay the Hawaiian-Philippine Co. upon presentation of accounts at the end of each month. Under this hypothesis, Song Fo & Company should have paid for the molasses delivered in December, 1922, and for which accounts were received by it on January 5, 1923, not later than January 31 of that year. Instead, payment was not made until February 20, 1923. All the rest of the molasses was paid for either on time or ahead of time.

The terms of payment fixed by the parties are controlling. The time of payment stipulated for in the contract should be treated as of the essence of the contract. Theoretically, agreeable to certain conditions which could easily be imagined, the Hawaiian-Philippine Co. would have had the right to rescind the contract because of the breach of Song Fo & Company. But actually, there is here present no outstanding fact which would legally sanction the rescission of the contract by the Hawaiian-Philippine Co.

The general rule is that rescission will not be permitted for a slight or casual breach of the contract, but only for such breaches as are so substantial and fundamental as to defeat the object of the parties in making the agreement. A delay in payment for a small quantity of molasses for some twenty days is not such a violation of an essential condition of the contract was warrants rescission for non-performance. Not only this, but the Hawaiian-Philippine Co. waived this condition when it arose by accepting payment of the overdue accounts and continuing with the contract. Thereafter, Song Fo & Company was not in default in payment so that the Hawaiian-Philippine co. had in reality no excuse for writing its letter of April 2, 1923, cancelling the contract. (Warner, Barnes & Co. *vs*. Inza [1922], 43 Phil., 505.)

We rule that the appellant had no legal right to rescind the contract of sale because of the failure of Song Fo & Company to pay for the molasses within the time agreed upon by the parties. We sustain the finding of the trial judge in this respect.

3. On the basis first, of a contract for 300,000 gallons of molasses, and second, of a contract imprudently breached by the Hawaiian-Philippine Co., what is the measure of damages? We again turn to the facts as agreed upon by the parties.

The first cause of action of the plaintiff is based on the greater expense to which it was put in being compelled to secure molasses from other sources. Three hundred thousand gallons of molasses was the total of the agreement, as we have seen. As conceded by the plaintiff, 55,006 gallons of molasses were delivered by the defendant to the plaintiff before the breach. This leaves 244,994 gallons of molasses undelivered which the plaintiff had to purchase in the open market. As expressly conceded by the plaintiff at page 25 of its brief, 100,000 gallons of molasses were secured from the Central North Negros Sugar Co., Inc., at two centavos a gallon. As this is the same price specified in the contract between the plaintiff and the defendant, the plaintiff accordingly suffered no material loss in having to make this purchase. So 244,994 gallons minus the 100,000 gallons just mentioned leaves as a result 144,994 gallons. As to this amount, the plaintiff admits that it could have secured it and more from the Central Victorias Milling Company, at three and one-half centavos per gallon. In other words, the plaintiff had to pay the Central Victorias Milling company one and one-half centavos a gallon more for the molasses than it would have had to pay the Hawaiian-Philippine Co. Translated into pesos and centavos, this meant a loss to the plaintiff of approximately P2,174.91. As the conditions existing at the central of the Hawaiian-Philippine Co. may have been different than those found at the Central North Negros Sugar Co., Inc., and the Central Victorias Milling Company, and as not alone through the delay but through expenses of transportation and incidental expenses, the plaintiff may have been put to greater cost in making the purchase of the molasses in the open market, we would concede under the first cause of action in round figures P3,000.

The second cause of action relates to lost profits on account of the breach of the contract. The only evidence in the record on this question is the stipulation of counsel to the effect that had Mr. Song Heng, the manager of Song Fo & Company, been called as a witness, he would have testified that the plaintiff would have realized a profit of P14,948.43, if the contract of December 13, 1922, had been fulfilled by the defendant. Indisputably, this statement falls far short of presenting proof on which to make a finding as to damages.

In the first place, the testimony which Mr. Song Heng would have given undoubtedly would follow the same line of thought as found in the decision of the trial court, which we have found to be unsustainable. In the second place, had Mr. Song Heng taken the witness-stand and made the statement attributed to him, it would have been insufficient proof of the allegations of the complaint, and the fact that it is a part of the stipulation by counsel does not change this result. And lastly, the testimony of the witness Song Heng, it we may dignify it as such, is a mere conclusion, not a proven fact. As to what items up the more than P14,000 of alleged lost profits, whether loss of sales or loss of customers, or what not, we have no means of knowing.

We rule that the plaintiff is entitled to recover damages from the defendant for breach of contract on the first cause of action in the amount of P3,000 and on the second cause of action in no amount. Appellant's assignments of error are accordingly found to be well taken in part and not well taken in part.

Agreeable to the foregoing, the judgment appealed from shall be modified and the plaintiff shall have and recover from the defendant the sum of P3,000, with legal interest form October 2, 1923, until payment. Without special finding as to costs in either instance, it is so ordered.

Avanceña, C.J., Johnson, Street, Villamor, Ostrand, Johns, Romualdez and Villa-Real, JJ., concur.

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